IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 313 of 2004 (S/B)

Date of decision: 5, October 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

Whether the reporters be allowed to see the judgment? (Yes)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 313 of 2004 (S/B)

Dr. Vishnu Datt Semwal,
S/o Suresha Nand Semwal,
R/o Dhar Gaon, P.O. Fata,
District Rudraprayag
Presently posted as Scientist 'B',
Herbal Research and Development Institute,
Gopeshwar, District Chamoli & another. ……. Petitioners

Versus

State of Uttaranchal through Secretary,
Horticulture Forest & Rural Development,
Government of Uttaranchal,
Dehradun & others. ……. Respondents

Mr. Pankaj Purohit, learned counsel for the petitioners.
Mr. K.P. Upadhyaya, learned Brief Holder for the State.

Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

1. Heard Mr. Pankaj Purohit, learned counsel for the petitioners and Mr. K.P. Upadhyaya, learned Brief Holder, who accepted the notice on behalf of respondents.

2. This is a writ petition by the two petitioners, who are doctorate holders and who were appointed on the post of Scientist 'B' in the respondent No. 2 i.e. Herbal Research and Development Institute, Gopeshwar, District Chamoli. Their appointment order is of contractual in nature and it provides that though the contract is for three years, it would be liable to be renewed every year. Clause (8) of the contract provides that the services of the petitioners can be terminated any time without giving any reasons or notice. Now, the respondent No. 2 has come out with an advertisement for three posts of Scientist 'B'. It is this advertisement, which is the subject of challenge in this writ petition.

3. The challenge, in short, is that when the petitioners have been selected by a high level committee of experts, though on contract, the Institute cannot fill-up the same posts by way of an advertisement. The petitioners have no quarrel with the proposition that they had

applied in pursuance to an advertisement dated 2.11.2002, where the posts were clearly offered only on the contractual basis. The gravamen of the challenge suggests that since they were selected earlier, the Institute cannot go and fill-up those posts.

4. In the first place, the posts in the advertisement are described as (नव सृजित निम्नांकित अस्थायी पदों पर). Therefore, it is clear that three posts of Scientist 'B' are newly created posts. There is nothing to suggest that they are not in addition to the posts available earlier. Even if they are not the additional posts and even if they are to be considered as the same old posts against which the petitioners are working, we fail to see any right in the petitioners. As has been stated earlier, the petitioners have accepted the contract for three years. The appointment order is very clear that the petitioners. could be terminated at any time without giving any reasons. The petitioners say that they had to accept the posts, as they had no choice as they were pitted against the mighty state.

5. We fail to understand the implication of this argument. Both the petitioners are doctorate holders. They had signed the contract with the open eyes (perhaps) and they had accepted all the conditions, on the basis of which, they came to be appointed. Now, they cannot just turn around and say that though these were contractual posts, by being selected against them, they have earned a right to be confirmed and that the Institute would have no right to advertise the posts in the open market. We, therefore, find no merit in the writ petition as the petitioners have no right, whatsoever, firstly, of getting confirmation and secondly, to challenge the discretion on the part of the respondent No. 2 to advertise the posts from the open market.

6. In that view, the writ petition is without any merits and it is dismissed.

(Irshad Hussain, J.) **(V.S. Sirpurkar, C.J.)**
05.10.2004 **05.10.2004**

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